

REMARKS

In response to the Final Office Action mailed June 1, 2005, please consider the above amendments and following remarks. In the office action, claims 1-38 and 78-97 were pending, and claims 8-32, 34, 36, 37, 85, 86 and 89 were withdrawn as being directed to a non-elected invention. Claims 1-7, 33, 35, 38, 78-84, 87, 88 and 90-91 stand rejected. In this preliminary amendment, claims 1-2, 8-15, 21, 24-26, 29-31, 78-81, 85-86, 91-92 and 94 have been amended, claims 22 and 32 have been cancelled, and claims 98-99 have been added. Consideration of the present application as amended and in view of the remarks that follow is respectfully requested.

With regard to the election/restriction requirement, the Final Office Action maintains and has made final the assertion that claims 8, 9, 12-14, 37, 85-86 and 89 do not read on the elected species of Figure 1. While Applicants' disagree with this assertion, withdrawn claims 8 and 85 have been amended to recite the implant is flexible. In the discussion of Fig. 1 in applicant's specification, it states "[s]tabilization system 28 includes a flexible implant 30...." (Emphasis added, *see* page 9, line 11.) Accordingly, amended claims 8 and 85 clearly read on the elected species of Fig. 1. Reinstatement and examination of claims 8, 9, 12-14 and 85-86 is respectfully requested.

Withdrawn claims 9-11, 15, 21, 24-26, and 29-31 have been amended to broaden their scope and clarify that the human body is not being claimed. These claims depend directly or indirectly from claim 1, which is allowable for the reasons provided below. Reinstatement of the withdrawn claims along with entry of the amendments to these withdrawn claims upon allowance of claim 1 is respectfully requested.

In the Final Office Action, claims 1-7, 33, 35, 38, 78-84, 87, 88 and 90-97 were rejected as being anticipated by U.S. Patent No. 4,790,303 to Steffee. Amended claim 1 recites "an implant having a first end and an opposite second end, at least a portion of one of said first and second ends structured for positioning in use in a tunnel formed in a first vertebral body; and at least one anchor sized to be embedded within the first vertebral body without protruding from the first vertebral body for attaching said at least a portion of said one of said first and second ends of said implant to the first vertebral body when positioned in the tunnel with said implant extending extradiscally to a second vertebral body." Steffee fails to disclose or suggest an

implant in combination with an anchor having the features recited in claim 1. In contrast, Steffee discloses fasteners 50, 52 that protrude from the respective vertebrae so that wire cable 70 can be placed through openings 71 of the fasteners and the cable ends can be overlapped in connector 72. Accordingly, Steffee cannot anticipate claim 1.

Claims 2-7, 33, 35 and 38 depend from claim 1 and were rejected in the Final Office Action. These claims distinguish Steffee at least for the reasons claim 1 distinguishes Steffee. Additional reasons can be provided to support the independent patentability of these claims. For example, Steffee fails to disclose claim 2 which recites “wherein said at least one anchor extends along and threadingly engages said one of said first and second ends of said implant.” Fasteners 50, 52 do not threadingly engage cable 70.

Steffee also fails to disclose claim 3, which recites “wherein the other of said first and second ends of said implant is structured for positioning in a second tunnel formed in the second vertebral body and further comprising a second anchor engageable to the second vertebral body for attaching said implant to the second vertebral body” since the ends of cable 70 are provided in overlapping relation for engagement with a connector 72 outside the vertebrae and cable 70 is not positioned in any tunnel. Steffee also fails to disclose the arrangements recited in claims 5 or 6. Furthermore, Steffee discloses that the anchors and the cable 70 are engaged in end-to-end fashion, and cannot anticipate claim 33, which recites “wherein said at least one anchor extends along said one end of said implant.” Accordingly, allowance of the claims depending from claim 1 is requested.

Amended claim 78 recites “an implant having a first end and an opposite second end, at least one of said first and second ends being positionable in a tunnel formed in a first vertebral body; and at least one anchor engageable to the first vertebral body for attaching said one of said first and second ends of said implant to the first vertebral body, wherein said implant includes a portion between said first and second ends sized to extend from the first vertebral body to a second vertebral body, said one of said first and second ends of said implant being angled relative to said portion for positioning into the first vertebral body in the tunnel.” Steffee fails to disclose or suggest an implant in combination with an anchor where an end of the implant is angled. Cable 70 includes a linear structure and does not include any angled end. Accordingly,

Steffee cannot anticipate claim 78.

Claims 79-84, 87, 88 and 90 depend from claim 78 and were rejected in the Final Office Action. These claims distinguish Steffee at least for the reasons claim 78 does. Additional reasons can be provided to support the independent patentability of these claims. For example, Steffee discloses anchor 50, 52 protruding from the vertebrae. Claim 79 recites “wherein said at least one anchor is sized to not protrude from the first vertebral body when in engagement with said one of said first and second ends.” Steffee therefore cannot anticipate claim 79. Claim 80 recites “wherein the other of said first and second ends of said implant is positionable in a second tunnel formed in the second vertebral body and further comprising a second anchor engageable to the second vertebral body in the tunnel for attaching said implant to the second vertebral body, wherein said at least one anchor and said second anchor are each sized to not protrude from the respective vertebral bodies when positioned therein in engagement with said implant.” Again, Steffee fails to disclose anchors that do not protrude from the vertebrae in combination with the implant as recited.

Steffee also discloses an implant including a cable 70 that is linear between its opposite ends. Claim 81 is not disclosed by Steffee since it recites “wherein the first and second ends extend in opposite directions from one another and are angled relative to said portion such that when engaged to the respective vertebral bodies the first and second ends each form an angle ranging from about 0 degrees to about 80 degrees relative to an axial plane taken at an entry location of the respective first and second ends into the respective vertebral body.” Claim 82 depends from claim 81 and is also not disclosed by Steffee since it recites “wherein said angles are in the range of about 25 degrees to about 65 degrees.” Furthermore, Steffee discloses that the anchors and the cable 70 are engaged in end-to-end fashion, and cannot anticipate claim 87, which recites “wherein said at least one anchor extends along said one end of said implant.” Accordingly, allowance of the claims depending from claim 78 is also requested.

Amended claim 91 recites “an implant having a flexible, conformable body extending between a first end and an opposite second end, at least a portion of one of said first and second ends including means for conforming to a first vertebral body in a tunnel formed in a first vertebral body; and at least one anchor engageable to the first vertebral body for attaching said

one of said first and second ends of said implant to the first vertebral body in the tunnel, said at least one anchor and said one of said first and second ends being configured to engage one another in the tunnel with said means for conforming in contact with the first vertebral body.”

As discussed above, Steffee does not disclose an implant including means for conforming to a vertebral body. Rather, Steffee discloses that cable 70 is maintained in a location that is spaced from the vertebral bodies via its engagement with the protruding portions of anchors 50, 52. Accordingly, there is no disclosure of an implant that functions to conform to the vertebral body, and claim 91 distinguishes Steffee.

Claims 92-97 depend from claim 91 and allowable at least for the reasons claim 91 is allowable. Additional reasons can be provided to support the independent patentability of at least some of these claims. For example, Steffee fails to disclose an implant with an angled end. Claim 92 recites “wherein said one of said first and second ends and said at least one anchor form an acute angle relative to an axial plane of the spinal column when engaged to the first vertebral body, wherein said angle is in the range of about 25 degrees to about 65 degrees.” Steffee further fails to disclose “wherein the other of said first and second ends of said implant is positionable in a second tunnel formed in a second vertebral body and further comprising a second anchor engageable to the second vertebral body for attaching said implant to the second vertebral body” as recited in claim 93.

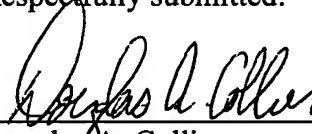
Steffee also fails to disclose an implant structured as recited in claim 94, “wherein when in the respective tunnels each of said first and second ends of said implant extends in a direction opposite one another and at an acute angle relative to an axial plane of the spinal column taken between the vertebral bodies”, and, as recited in claim 95, “wherein the angle of the first and second ends relative to the axial plane is in the range from about 25 degrees to about 65 degrees.” In addition, Steffee discloses the implant is spaced from the vertebra, and does not disclose claim 97 which recites “wherein said body is structured for positioning on anterior faces of the first vertebral body and the second vertebral body when said first and second ends are positioned in respective ones of said tunnels.” Accordingly, allowance of the claims depending from claim 91 is also requested.

New claims 98 and 99 depend from claims 91 and 78, respectively. Each of these claims

recites "wherein said at least one anchor extends along and threadingly engages said one of said first and second ends of said implant." Steffee does not disclose any such engagement relationship between fasteners 50 and cable 70, and claims 98-99 are believed allowable.

In view of the above amendments and remarks, it is believed that claims 1-21, 23-31, 33-38 and 78-99 are in condition for allowance, and a Notice of Allowance is hereby solicited. The Examiner is welcome to contact the undersigned to resolve any outstanding issues with regard to the present application.

Respectfully submitted:



Douglas A. Collier

Reg. No. 43,556

Krieg DeVault LLP

2800 One Indiana Square

Indianapolis, Indiana 46204-2079

Phone: (317) 238-6333